

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.74.343, the adoption of New Rules I)	PROPOSED AMENDMENT,
through XIX, and the repeal of ARM)	ADOPTION AND REPEAL
17.74.302, 17.74.303, 17.74.307 through)	
17.24.310, 17.74.314 through 17.74.319,)	(ASBESTOS CONTROL)
17.74.325 through 17.74.331, 17.74.335)	
through 17.74.338, 17.74.341 and)	
17.74.342 pertaining to the asbestos control))	
program)	

TO: All Concerned Persons

1. On March 6, 2006, at 10:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 20, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.74.343 RECIPROCITY (1) ~~Each applicant for accreditation~~ The
department may accredit a person in an asbestos-type related occupation who is
accredited in another state, ~~may request accreditation from the department~~ Upon
receipt of an application for accreditation based upon accreditation requirements of
the state where the applicant is accredited. ~~The department shall evaluate the~~
~~requirements for accreditation in the other state, and may provide an accreditation if~~
~~the requirements for accreditation in of the other state are equal to, or more stringent~~
~~than, and accredit the person if the requirements in the other state are at least as~~
stringent as the accreditation requirements under this subchapter.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

4. The proposed new rules provide as follows:

NEW RULE I INCORPORATION BY REFERENCE -- PUBLICATION DATES

(1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to:

(a) a federal regulation, the reference is to the July 1, 2005, edition of the Code of Federal Regulations (CFR);

(b) a section of the United States Code (USC), the reference is to the 2000 edition of the USC and Supplement 1 (2002);

(c) a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA; or

(d) a rule of another agency of the state of Montana, the reference is to the December 31, 2004, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE II INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) 40 CFR 61, subparts A and M, pertaining to national emission standards for hazardous air pollutants (NESHAPs) for asbestos, with the following exception:

(i) 40 CFR 61.145(a)(2) and (4) are not incorporated by reference.

(b) National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, fourth edition, August 1994, which contains a description of the 7400 Analytical Method for detecting asbestos and other fibers by phase contrast microscopy (PCM) and a description of the 7402 Analytical Method for detecting asbestos by transmission electron microscopy (TEM);

(c) Montana Asbestos Work Practices and Procedures Manual (2005).

(2) Copies of these materials may be obtained from the Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at <http://www.access.gpo.gov/nara/cfr/index.html>.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE III DEFINITIONS For purposes of this subchapter the following definitions apply:

(1) "Approved asbestos disposal facility" means a licensed Class II landfill as described in ARM 17.50.504.

(2) "Asbestos-containing material (ACM)" means any material containing more than 1% asbestos.

(3) "Asbestos inspector" means any person who inspects a facility for the presence of asbestos-containing material.

(4) "Asbestos management planner" means any person who develops plans for the management of asbestos-containing material.

(5) "Asbestos project" has the meaning given in 75-2-502(3), MCA. "Pipe,"

as the term is used in this definition and 75-2-503(3), MCA, includes any coating or wrap made of regulated asbestos-containing material that partially or wholly surrounds the pipe.

(6) "Asbestos project contractor" means any person who contracts to perform an asbestos project for another person.

(7) "Asbestos project contractor/supervisor" means a person who provides supervision and/or direction to asbestos workers engaged in an asbestos project.

(8) "Asbestos project designer" means a person who develops the plans, specifications, and/or designs for an asbestos project.

(9) "Asbestos project worker" means any person other than those listed in (4) and (6) through (8) who is engaged in an asbestos project.

(10) "Asbestos-related occupation" has the meaning given in 75-2-502(4), MCA.

(11) "Category I non-friable ACM" has the meaning given in 40 CFR 61.141.

(12) "Category II non-friable ACM" has the meaning given in 40 CFR 61.141.

(13) "Clean room" means an uncontaminated room having facilities for the storage of employees' street clothing and uncontaminated materials and equipment.

(14) "Containment area" means a negative-pressure asbestos project work area and decontamination unit that is configured to isolate asbestos project activities from areas that are to remain uncontaminated.

(15) "Critical barrier" means one or more layers of plastic sealed over all openings into a work area or any other similarly placed physical barrier sufficient to prevent airborne asbestos in a work area from migrating to an adjacent area.

(16) "Decontamination area" means an enclosed area adjacent and connected to the regulated area and consisting of an equipment room, shower area, and clean room, which is used for the decontamination of workers, materials, and equipment that are contaminated with asbestos.

(17) "Demolition" has the meaning given in 40 CFR 61.141.

(18) "Department", as defined in 75-2-502(5), MCA, means the Department of Environmental Quality, provided for in 2-15-3501, MCA.

(19) "Emergency renovation operation" has the meaning given in 40 CFR 61.141.

(20) "Encapsulation" means the treatment of regulated asbestos-containing material (RACM) with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant). This definition does not include the repainting of a previously painted, undamaged, non-friable RACM surface primarily to improve the appearance of the surface.

(21) "Enclosure" has the meaning given in 40 CFR 763.83.

(22) "Equipment room (change room)" means a contaminated room located within the contamination area that is supplied with impermeable bags or containers for the disposal of contaminated protective clothing and equipment.

(23) "Facility" has the meaning given in 40 CFR 61.141.

(24) "Friable asbestos-containing material" or "friable ACM" means any ACM that when dry may be crumbled, pulverized, or reduced to powder by hand pressure.

(25) "Glove bag" has the meaning given in 40 CFR 61.141.

(26) "Inspection" means an activity undertaken in a facility to determine the presence or location, or to assess the condition, of friable or non-friable RACM or suspected RACM, whether by visual or physical examination, or by collecting samples of the material. This term includes reinspections of friable and/or non-friable known or assumed RACM which has been previously identified. The term does not include the following:

(a) inspections performed by employees or agents of federal, state, or local government solely to determine compliance with applicable statutes or regulations; or

(b) visual inspections performed solely to determine completion of response actions.

(27) "Local education agency" or "LEA" has the meaning given in 40 CFR 763.83.

(28) "Non-friable asbestos-containing material (non-friable ACM)" has the meaning given in 40 CFR 61.141.

(29) "Nonoccupational setting" means an environment in which the occupants are not handling, working with, or exposed to asbestos resulting from an asbestos project.

(30) "Person" has the meaning given in 75-2-502(6), MCA.

(31) "Regulated area" means an area established by an asbestos contractor or building owner to demarcate areas in which an asbestos project is being conducted, and any adjoining area where debris and waste from such asbestos work accumulate.

(32) "Regulated asbestos-containing material (RACM)" has the meaning given in 40 CFR 61.141.

(33) "Renovation" means altering (including modifying and/or remodeling) a facility or any of its components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

(34) "Repair" means returning damaged RACM to an undamaged condition or to an intact state so as to prevent fiber release.

(35) "Structural member" has the meaning given in 40 CFR 61.141.

(36) "Visible emissions" has the meaning given in 40 CFR 61.141.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE IV APPLICABILITY--ASBESTOS PROJECT REQUIREMENTS

(1) All asbestos projects must be performed in accordance with the requirements of the Montana Asbestos Work Practices and Procedures Manual and 40 CFR 61, subpart M, with the following exceptions:

(a) the minimum quantities of regulated asbestos-containing material (RACM) specified in 40 CFR 61.145(a)(1)(i) and (ii) and (4)(i) and (ii) do not apply; and

(b) for purposes of 40 CFR 61.145(a)(1) and (4), the minimum quantities of RACM provided in 75-2-502(3), MCA, shall apply.

(2) For purposes of this subchapter, inspections required by 40 CFR

61.145(a) must be conducted by a Montana-accredited asbestos inspector.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE V INSPECTION OF DEMOLITION AND RENOVATION

ACTIVITIES (1) Prior to any demolition or renovation of a facility, the owner or operator shall have the facility inspected for the presence of asbestos by a Montana-accredited asbestos inspector.

(2) An inspection required under this rule must be conducted in conformance with the Montana Asbestos Work Practices and Procedures Manual.

AUTH: 75-2-503, MCA

IMP: 75-2-503, MCA

NEW RULE VI ASBESTOS PROJECT PERMITS (1) Pursuant to 75-2-511,

MCA, a person may not conduct an asbestos project without a permit issued by the department, or violate the conditions of the permit.

(2) The owner, or the asbestos project contractor, of the facility where an asbestos project is to be conducted shall submit to the department, on a form provided by the department, an application for a project permit that contains the following:

(a) a completed original Montana Asbestos Project Permit Application and NESHAP Demolition/Renovation Notification form;

(b) a description of the facility, the asbestos project to be performed, and the dates during which the asbestos project will be performed;

(c) a signed statement by the owner or the asbestos project contractor/supervisor that all work performed under authorization of the requested permit will be performed in accordance with this subchapter;

(d) a list of the asbestos project workers and contractor/supervisors who will be performing functions on the project, including their Montana accreditation identification numbers and accreditation expiration dates;

(e) the permit fee required under ARM 17.74.401;

(f) a project design prepared by an asbestos project designer. At a minimum, the asbestos project design must contain the following information:

(i) a description of the physical work area, including a drawing (not necessarily to scale), indicating the location of exhaust ventilation machines, decontamination enclosures and waste load-out area;

(ii) a description of the amount of RACM to be removed, encapsulated, enclosed, repaired, transported, or disposed;

(iii) a description of how the project will shut down and lock out electric power and heating, ventilation, and air conditioning systems;

(iv) a description of precleaning and removal of objects from the work area;

(v) a schedule for sealing off all openings with critical barriers including, but not limited to, corridors, doorways, skylights, ducts, grills, diffusers, and other penetrations of the work area;

- (vi) a description of containment barriers including airlocks, fire and emergency exits, and labeling procedures to be used on barriers;
- (vii) a description of the worker decontamination enclosure system to be used;
- (viii) a description of exhaust ventilation systems to be used;
- (ix) a description of alternate methods of containment to be used, such as glove bags, removal of the entire asbestos covered pipe or structure, and construction of mini-enclosures, which, if used, must comply with the Montana Asbestos Work Practices and Procedures Manual.
- (x) a description of personal protective equipment and clothing to be worn by asbestos project workers;
- (xi) a description of work practices to be followed by asbestos project workers;
- (xii) a description of methods to be used to remove, encapsulate, repair, or enclose RACM;
- (xiii) a description of wetting agents, encapsulants, and sealants to be used;
- (xiv) a description of the air monitoring plan and the identity of the individual conducting the air monitoring; and
- (xv) a description of the procedures to be used for transportation and disposal of RACM.

(3) If an application is deficient or incomplete, the department shall notify the applicant of the information necessary to complete the application. If the department has not received the information within its established time frame, the application will be considered withdrawn.

(4) If the dates during which an asbestos project is to be conducted change, the asbestos project contractor/supervisor or the owner of the facility shall notify the department of the change at least 24 hours prior to:

- (a) implementation of the new scheduled date; or
- (b) the original scheduled date, whichever comes first.

(5) Within 72 hours after any initial verbal notice to the department of a change in the dates during which an asbestos project is to be performed, the permittee shall submit to the department a signed, original written notice of the newly-scheduled dates, using an application form provided by the department. If the new dates are substantially different from those specified in the permit, the department may require the permittee to apply for an amendment to the permit.

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-511 MCA

NEW RULE VII ASBESTOS PROJECT CONTROL MEASURES (1) An asbestos project contractor/supervisor shall be physically present at all times at the work site where an asbestos project is being conducted. The asbestos project contractor/supervisor shall be accessible to all asbestos project workers.

(2) Asbestos projects, including any on-site air monitoring, must comply with the requirements of the Montana Asbestos Work Practices and Procedures Manual.

(3) Upon written request, the department may approve alternate control measures that are equivalent to those required under this rule.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

NEW RULE VIII CLEARING ASBESTOS PROJECTS (1) At the conclusion of any asbestos project conducted in a facility, the owner of the facility shall sample the air to ensure that the indoor concentration of airborne fibers in a nonoccupational setting for each of five samples is less than or equal to 0.01 fibers per cubic centimeter of air or 70 structures per square millimeter of filter. Clearance sampling is not required if an asbestos project in a facility has occurred immediately prior to demolition of the entire facility, and the facility is not reoccupied prior to demolition. The five air samples must be taken in accordance with the Montana Asbestos Work Practices and Procedures Manual.

(2) The department may approve alternate work practices.

AUTH: 75-2-503, MCA
IMP: 75-2-503, MCA

NEW RULE IX EMERGENCY RENOVATION OPERATION PERMITS

(1) For an emergency renovation operation, as defined in 40 CFR 61.141, the asbestos project contractor or owner of the facility shall immediately notify the department by telephone or in person and submit to the department, on a form provided by the department, a completed application for an asbestos project permit pursuant to [NEW RULE VI] within five working days after the initial notice.

(2) An application for an emergency renovation operation permit must include a description of the emergency renovation operation and must demonstrate that an emergency, as defined in 40 CFR 61.141, existed that prevented the asbestos project contractor or owner of the facility from applying for a permit prior to initiation of the project.

AUTH: 75-2-503, MCA
IMP: 75-2-503, 75-2-511, MCA

NEW RULE X ANNUAL ASBESTOS PROJECT PERMITS (1) An annual asbestos project permit authorizes a facility to conduct asbestos projects within the confines of the facility's controlled area during the period for which the permit is in force.

(2) The owner or operator of a facility may apply to the department for an annual asbestos project permit if the facility:

- (a) continuously employs asbestos project workers; or
- (b) continuously contracts with outside contractors to perform asbestos projects for the facility; and
- (c) maintains an asbestos health and safety program that incorporates standard operating procedures for employees involved in asbestos projects in accordance with the Montana Asbestos Work Practices and Procedures Manual.

(3) An owner or operator conducting asbestos projects under an annual permit shall comply with all requirements pertaining to asbestos project notification.

(4) The owner or operator of a facility applying for an annual asbestos project permit shall submit to the department:

- (a) the fee required under ARM 17.74.401;
- (b) a copy of the facility's written health and safety program on asbestos; and
- (c) a completed application on a form provided by the department, including:
 - (i) a description of the structure and the asbestos work to be performed;
 - (ii) the name(s) and address(es) of any outside contractor or contractors who will be performing asbestos projects at the facility under the permit;
 - (iii) a signed statement that all work performed under the permit will be performed in accordance with this subchapter;
 - (iv) a signed statement that all work will be performed by persons accredited by the department; and
 - (v) a signed statement that removed RACM will be disposed of at an approved asbestos disposal facility and the name and location of the disposal facility.

(5) A facility owner or operator may apply annually for renewal of an annual permit.

(a) An application for renewal need address in detail only the portions of the permit application that require revision, updating, supplementation, or deletion, and may reference any required information that has been previously submitted.

AUTH: 75-2-503, MCA

IMP: 75-2-503, 75-2-504, MCA

NEW RULE XI RECORDKEEPING (1) Records of asbestos projects that are being, or have been, conducted must be retained for at least 30 years and made available to the department upon request.

(2) Records must be retained and made available to the department by:

- (a) the asbestos project contractor/supervisor for the project; or
- (b) the owner of the facility in which the project is being or has been conducted if the owner is accredited by the department and is conducting the project without a contractor/supervisor.

(3) Records of asbestos projects must include, but are not limited to, the following:

- (a) the name, address, and accreditation identification number of the person who supervised each asbestos project, and of each person who worked on the project;
- (b) the location and description of each project and the amount of RACM that was enclosed, removed, repaired, encapsulated, or placed in new construction;
- (c) the starting and completion dates of each instance of enclosure, removal, repair, encapsulation, or placement in new construction;
- (d) the name and address of each facility where waste RACM was deposited for disposal. Holders of annual permits are not required to maintain records designating where wastes from specific asbestos projects are deposited, but holders of annual permits shall maintain records of each shipment of RACM;
- (e) a receipt from each disposal facility indicating the amount of RACM deposited at the site and the date of the deposit; and

(f) the transportation manifest records indicating the amount of RACM transported to each approved asbestos disposal facility and the name and location of each facility.

AUTH: 75-2-503, MCA

IMP: 75-2-513, MCA

NEW RULE XII DEPARTMENT INSPECTIONS (1) The owner of the facility where an asbestos project is being or was conducted, or a person conducting or in charge of an asbestos project shall:

(a) afford the department, at all reasonable times, the opportunity to inspect the project site;

(b) upon request, make records maintained pursuant to this subchapter available to the department for inspection and copying;

(c) allow department inspectors to consult privately with asbestos project workers concerning occupational exposure to asbestos and other matters related to the applicable provisions of this subchapter, to the extent necessary for an effective and thorough inspection; and

(d) maintain proof of accreditation and photo identification of all persons involved in the asbestos project. These documents must be available at the project site for the duration of the project and must be made available to the department upon request.

AUTH: 75-2-503, MCA

IMP: 75-2-518, MCA

NEW RULE XIII ACCREDITATION REQUIREMENTS FOR ASBESTOS-RELATED OCCUPATIONS (1) Pursuant to 75-2-511, MCA, a person may not:

(a) engage in an asbestos-related occupation unless accredited in that occupation by the department; or

(b) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department.

(2) A person seeking initial accreditation in an asbestos-related occupation shall:

(a) successfully complete either a training course approved by the department pursuant to this subchapter, or a course approved by the U.S. environmental protection agency and shall pass an examination approved by the department; and

(b) submit to the department a completed application form provided by the department, with the fee required in ARM 17.74.402 and a copy of a certificate of satisfactory completion from the course approved for that occupation.

(3) The department may deny, suspend, or revoke accreditation of a person pursuant to 75-2-515, MCA.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XIV RENEWAL OF ACCREDITATION (1) A person may not engage in an asbestos-related occupation after the expiration of accreditation until accreditation is renewed.

(2) Accreditation for each asbestos-related occupation may be renewed annually on or before the expiration date of accreditation by submitting to the department a completed application form provided by the department, a certificate of satisfactory completion of a department approved refresher course, and the appropriate fee.

(3) An applicant for renewal of accreditation in an asbestos-related occupation, except asbestos project inspector and management planner, shall attend a one-day refresher course approved by the department or EPA for that specific occupation.

(4) For renewal of accreditation as an asbestos project inspector, a person shall attend a half-day refresher course approved by the department or EPA.

(5) Asbestos project management planners shall attend the half-day asbestos inspector refresher course plus an additional half-day refresher course on asbestos project management planning approved by the department or EPA.

(6) If a person does not apply for renewal of accreditation within one year following the expiration of accreditation, the person must obtain accreditation under [NEW RULE XIII] to engage in an asbestos-related occupation.

(7) An applicant for renewal of accreditation as instructor shall attend a refresher course taught by another instructor.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XV TRAINING PROVIDER REQUIREMENTS (1) Pursuant to 75-2-511, MCA, a person may not offer a training course in Montana for accreditation of persons in any asbestos-related occupation unless the department has approved the course.

(2) The department shall approve a training course if it meets the requirements listed in [NEW RULE XVI].

(3) For department approval of a training course, instructors' qualifications must include:

(a) significant academic and/or field experience in asbestos control; and

(b) current accreditation in the course(s) they teach.

(4) Except for the asbestos project worker course and the refresher courses, at least two approved instructors shall conduct all training courses.

(5) All training course materials and examinations must be submitted to the department for approval. A person may apply for approval of a training course by submitting all of the following to the department at least 45 calendar days prior to the proposed date of course presentation:

(a) a completed written application on a form provided by the department;

(b) a curriculum that includes the course topics specified in this subchapter;

(c) a copy of the course examination and all course materials (written and visual);

(d) a copy of the certification of satisfactory completion to be used for

certification at the end of the course;

(e) a list of the instructors who will teach the course and documentation of the instructors' qualifications, which must include significant academic and/or field experience in asbestos control;

(f) a description of hands-on training to be provided in the course;

(g) a course schedule indicating the time allotted and the instructor for each subject;

(h) the appropriate fee for approval of the course, specified in ARM 17.74.403; and

(i) documentation of EPA course approval if the course has been approved by EPA pursuant to 15 USC 2643.

(6) At least 10 working days before a course commences, the person providing the training course shall notify the department of the date, time, and location of the course.

(7) The department must be notified in advance of any proposed changes in the content of training courses, examinations, or instructors. The department shall approve or deny any proposed changes in training course or examination contents or change in instructor(s) prior to approving the course or examination.

(8) The department may audit an approved training course and examination and may audit a training course following any change in the course.

(9) Following an audit conducted under this rule, the course provider shall pay the audit fee specified in ARM 17.74.404.

(10) Department personnel may audit any training course offered for accreditation in an asbestos-related occupation without paying tuition or the cost of materials.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XVI TRAINING COURSE REQUIREMENTS (1) A training course for accreditation as an asbestos project worker must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.1, Workers.

(2) A training course for accreditation as an asbestos project contractor/supervisor must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.2, Contractor/Supervisor.

(3) A training course for accreditation as an asbestos project inspector must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.3, Inspector.

(4) A training course for accreditation as an asbestos project management planner must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.4, Management Planner.

(5) A training course for accreditation as an asbestos project designer must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.5, Project Designer.

(6) For purposes of this rule, the phrase "public and commercial building" has the meaning given in the definition of "facility" at [NEW RULE III(23)].

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XVII TRAINING COURSE EXAMINATIONS (1) The following requirements apply to asbestos-related occupation accreditation training course examinations:

(a) for asbestos project worker, asbestos inspector, and asbestos project management planner training courses, the examination must include 50 multiple choice questions with a passing score of at least 70%; and

(b) for asbestos project contractor/supervisor and asbestos project designer courses, the examination must include 100 multiple choice questions with a passing score of at least 70%.

(2) All examinations must be closed book.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XVIII REFRESHER COURSES (1) A person may not offer a refresher course for renewal of accreditation under [NEW RULE XIV] unless the department has approved the course.

(2) Refresher courses must relate to a particular asbestos-related occupation and must include review of changes in federal and state regulations, developments in state-of-the-art procedures, and key aspects of the initial training course.

(3) For department approval of a refresher course, a person shall submit to the department, on a form provided by the department, a completed application and the fee specified in ARM 17.74.403. The application must include:

(a) a description of the subject matter to be taught in the refresher course;

(b) the materials to be used;

(c) a description and example of the numbered certificates to be issued to students who successfully complete the course;

(d) the names of the instructors who will teach the course; and

(e) a description of the instructors' qualifications, which must include academic and/or field experience in asbestos control.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

NEW RULE XIX TRAINING COURSE AND REFRESHER COURSE CERTIFICATE AND RECORDKEEPING REQUIREMENTS (1) A person providing a training course for accreditation in an asbestos-related occupation shall provide a certificate to all persons who successfully complete the course and the examination. The certificate must be numbered and include:

(a) the asbestos-related occupation course completed;

(b) the course participant's name and address;

(c) the date of the examination;

(d) the signature of at least one course instructor;

(e) the inclusive dates of the course;

- (f) the name, address, and telephone number of the training provider who issued the certificate;
 - (g) the name and address of the agency that approved the course;
 - (h) a statement that the person receiving the certificate has completed the training required for accreditation under this subchapter;
 - (i) a statement that the trainee, by name, has successfully passed the examination for the course; and
 - (j) an accreditation expiration date of one year after the date upon which the person successfully completed the course and examination.
- (2) A person providing a training course for accreditation or a refresher course for renewal of accreditation in an asbestos-related occupation shall retain:
- (a) copies of all training course materials used, including student manuals, instructor notebooks, and handouts;
 - (b) copies of all documents relating to that training course or refresher course issued to that person by the department;
 - (c) records that identify the instructors;
 - (d) records of the examinations, including:
 - (i) the date of the examination;
 - (ii) the name of the training course;
 - (iii) the name of the person who proctored the examination;
 - (iv) the name of each person taking the examination;
 - (v) each trainee's examination score; and
 - (vi) a copy of the examination; and
 - (e) records of all persons who have been awarded certificates, including:
 - (i) their names and certificate numbers;
 - (ii) their certified asbestos-related occupations;
 - (iii) the dates of their training;
 - (iv) the expiration dates of accreditation; and
 - (v) the training location.
- (3) A training course provider shall maintain all records required under this rule for at least three years.
- (4) A training course provider shall provide EPA and the department with reasonable access to all training records upon request.

AUTH: 75-2-503, MCA

IMP: 75-2-511, MCA

5. The rules proposed for repeal are as follows:

17.74.302 DEFINITIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at pages 17-8301 through 17-8306, Administrative Rules of Montana. This rule would be replaced by New Rule III Definitions.

17.74.303 EXCLUSIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8306, Administrative Rules of Montana. This rule would not be replaced.

17.74.307 EVALUATION OF ASBESTOS HAZARDS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at pages 17-8315 and 17-8316, Administrative Rules of Montana. This rule would be replaced by New Rule II Incorporation by Reference.

17.74.308 CLEARING ASBESTOS ABATEMENT PROJECTS IN STRUCTURES OTHER THAN LEA SCHOOL BUILDINGS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at pages 17-8317 through 17-8320, Administrative Rules of Montana. This rule would be replaced by New Rule VIII Clearing Asbestos Projects.

17.74.309 EVALUATION OF ASBESTOS HAZARDS IN LEA SCHOOL BUILDINGS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8321, Administrative Rules of Montana. This rule would be replaced by New Rule II Incorporation by Reference.

17.74.310 CLEARING ASBESTOS ABATEMENT PROJECTS IN LEA SCHOOL BUILDINGS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8321, Administrative Rules of Montana. This rule would be replaced by New Rule II Incorporation by Reference.

17.74.314 REQUIREMENTS OF ACCREDITATION AND PERMITTING FOR PERSONS ENGAGED IN AN ASBESTOS-TYPE OCCUPATION (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8331, Administrative Rules of Montana. This rule would be replaced by New Rule XIII Accreditation Requirements for Asbestos-Related Occupations.

17.74.315 ACCREDITATION OF ASBESTOS INSPECTOR; ASBESTOS MANAGEMENT PLANNER; ASBESTOS ABATEMENT PROJECT DESIGNER; ASBESTOS ABATEMENT CONTRACTOR; ASBESTOS ABATEMENT SUPERVISOR; AND ASBESTOS WORKER (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8331 and 17-8332, Administrative Rules of Montana. This rule would be replaced by New Rule XIII Accreditation Requirements for Asbestos-Related Occupations.

17.74.316 RENEWAL OF ACCREDITATION (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8332 and 17-8333, Administrative Rules of Montana. This rule would be replaced by New Rule XIV Renewal of Accreditation.

17.74.317 TRAINING COURSE AND EXAMINATION REQUIREMENTS (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at page 17-8333, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.318 APPLICATION FOR ACCREDITATION OF A TRAINING COURSE; CERTIFICATION (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511,

MCA), located at pages 17-8337 and 17-8338, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements and New Rule XIX Training Course and Refresher Course Certificate and Recordkeeping Requirements.

17.74.319 COURSE APPROVAL (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at page 17-8339, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.325 ASBESTOS INSPECTOR'S COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8345 through 17-8347, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.326 ASBESTOS MANAGEMENT PLANNERS COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8351 through 17-8353, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.327 ASBESTOS ABATEMENT PROJECT DESIGNER'S COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8353 through 17-8355, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.328 ASBESTOS ABATEMENT CONTRACTOR'S AND SUPERVISOR'S COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8361 through 17-8363, Administrative Rules of Montana. This rule would be replaced with New Rule XVI Training Course Requirements.

17.74.329 ASBESTOS ABATEMENT WORKER'S COURSE (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8363 and 17-8364, Administrative Rules of Montana. This rule would be replaced by New Rule XVI Training Course Requirements.

17.74.330 EXAMINATIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at page 17-8365, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Training Course Examinations.

17.74.331 REFRESHER COURSES (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at page 17-8365, Administrative Rules of Montana. This rule would be replaced by New Rule XVIII Refresher Courses.

17.74.335 ASBESTOS ABATEMENT PROJECT PERMITS (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA), located at pages 17-8375 through 17-8377, Administrative Rules of Montana. This rule would be replaced by New Rule II Incorporation by Reference, New Rule IV Applicability--Asbestos Project Requirements, and New Rule VI Asbestos Project Permits.

17.74.336 ANNUAL PERMITS (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-504, MCA), located at pages 17-8381 and 17-8382, Administrative Rules of Montana. This rule would be replaced by New Rule X Annual Asbestos Project Permits.

17.74.337 EMERGENCY ASBESTOS PROJECT PERMITS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8382, Administrative Rules of Montana. This rule would be replaced by New Rule IX Emergency Renovation Operation Permits.

17.74.338 ASBESTOS ABATEMENT PROJECT CONTROL MEASURES (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at page 17-8383, Administrative Rules of Montana. This rule would be replaced by New Rule VII Asbestos Project Control Measures.

17.74.341 RECORDKEEPING (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-513, MCA), located at page 17-8391, Administrative Rules of Montana. This rule would be replaced by New Rule XI Recordkeeping.

17.74.342 INSPECTIONS (AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA), located at pages 17-8391 and 17-8392, Administrative Rules of Montana. This rule would be replaced by New Rule XII Department Inspections.

REASON: The Department is proposing the repeal of most (not including ARM 17.74.301 and 17.74.343) of the Administrative Rules in ARM Title 17, chapter 74, subchapter 3, General Provisions, and the adoption of new equivalent rules for most (not including ARM 17.74.303).

The new rules comprise an equivalent asbestos control program written in an incorporation by reference (IBR) format. The proposed IBR format references sections of the Code of Federal Regulations (CFR), the Administrative Rules of Montana, the U.S. Code, and the Montana Asbestos Work Practices and Procedures Manual. The format change is being proposed for the following reasons:

- a. the incorporation of new rules promulgated by EPA would be accomplished by annually updating the publication dates in New Rule I; and
- b. the current asbestos control program rules contain much language repeated from the CFR.

One "state only" rule, ARM 17.74.301, Applicability and Purpose, would remain the same.

The Department is proposing the repeal of ARM 17.74.303, Exclusions, and not replacing it with a new rule. ARM 17.74.303 is a "state only" rule that provides a conditional exclusion from the provisions of ARM Title 17, chapter 74, subchapter 3, for homeowners who are conducting an asbestos abatement project in their residence. The Asbestos Control Program does not have the resources to implement and enforce ARM 17.74.303.

Several grammatical revisions are proposed for ARM 17.74.343. These revisions clarify the rule, but do not change the meaning.

In New Rule II(1)(a)(i), sections 40 CFR 61.145(a)(2) and (4) are not incorporated by reference because the minimum quantities of requested asbestos-containing material provided in 75-2-502(3), MCA, apply.

The title of ARM Title 17, chapter 74, subchapter 3, would be revised from "General Provisions" to "Asbestos Control."

6. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov, no later than March 13, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Jane Amdahl, attorney, has been designated to preside over and conduct the hearing.

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@mt.gov or may be made by completing a request form at any rules hearing held by the Department.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David M. Rusoff
DAVID M. RUSOFF
Rule Reviewer

BY: /s/ Richard H. Oppen
RICHARD H. OPPER, Director

Certified to the Secretary of State, January 13, 2006.